2006

Stichting Mayflower Mountain Fonds, and Stichting Mayflower Recreational Fonds v. Park City Municipal Corporation, East West Partners and United Park city Mines Co. : Brief of Appellant

Utah Court of Appeals

Appeal Number: 20061019-CA
Case Number: 060500190

IN THE UTAH COURT OF APPEALS

STICHTING MAYFLOWER MOUNTAIN FONDS, and STICHTING MAYFLOWER RECREATIONAL FONDS. Netherlands associations; **Plaintiffs and Appellants** vs. PARK CITY MUNICIPAL CORPORATION, EAST WEST PARTNERS AND UNITED PARK CITY MINES CO., **Defendants and Appellees**	**BRIEF OF APPELLANTS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES & RULES

MUNICIPAL ORDINANCES

JURISDICTION

The Court has Jurisdiction of this matter pursuant to § 78-2-2(a) and § 78-2a-(2)(j), U.C.A. (1953).

ISSUES FOR REVIEW

1. Where the State has conferred jurisdiction of a cause of action upon State district courts, may it withhold jurisdiction of that cause from the federal district court in cases of diversity of citizenship? Preserved: Response to Motion to Dismiss, July 6,2006; Ruling and Order, October 5, 2006, at 7; Notice of Appeal.

2. May the District Court gratuitously assert failure to exhaust administrative remedies where (a) no party so claims, (b) neither the court nor the parties can identify any such remedy not exhausted, and (c) all remedies provided by the pertinent code have been exhausted?

Preserved: Ruling and Order, October 5, 2006, at 11-13; Notice of Appeal.

STANDARD OF REVIEW

The issues present only questions of law. Review is de novo, without deference to the views of the District Court. *Colonial Leasing v. Farm Bros. Construction Co.*, 731 P.2d. 483 (Utah 1998).

STATEMENT OF CASE

Plaintiffs filed this action in the United States District Court, District of Utah, within 30 days of a decision of Park City Municipal Corporation, at the request of East West Partners and United Park City Mines Co., to landlock property of plaintiffs, preventing its development, in violation of a Park City Ordinance. The action seeks a declaration of invalidity of the City's decision upon the grounds of failure of compliance with the Ordinance and unconstitutional discrimination.

The United States District Court found that it had jurisdiction of the matter based upon diversity of citizenship, but abstained on the ground the matter was better decided by a State court. It did so without prejudice to re-file in the State District Court, which was promptly done.

The Third District Court, on Motion to Dismiss, found that §10-9-1001 (2)(a), U.C.A. (1953) disallows filing of such matters in the federal court; thus, subsequent filing in the State Court following abstention was untimely. Further, though nowhere raised in the Motion to Dismiss, the District Court found that plaintiff had failed to exhaust administrative remedies. The Court did not resort to the Park City Code to determine remedies available. It was not able to identify any remedies not exhausted. The District Court dismissed the Complaint by Ruling and Order, October 5, 2006, Notice of Appeal was timely filed October 30, 2006.

STATEMENT OF FACTS

On Motion to Dismiss, the facts are as alleged in the Complaint, as follows:

1. Plaintiff are the owners of land within the municipal limits of Park City, generally denominated the Marsac Lode, Lot No. 61, aggregating approximately five acres.

2. The Marsac Lode has been included by Park City in an eighty-four acre development zone, generally denominated the "Mountain Village", as a part of a Master Planned Development ("MPD"). The remainder of land included in said zone belongs to UPCM, or its successor East West. Though all land within the "Mountain Village" is identically zoned, Park City asserts that no land within said zone is entitled to the development permitted by such zone except land belonging to UPCM or its successors.

3. Historically, the Mountain Village area has been accessible from the remainder of Park City by State Road 224 ("SR224"), sometimes called Marsac Avenue.

4. In 2002, in order to maximize developability of its land within the Mountain Village, UPCM, without permission from plaintiffs, relocated SR224 so that it bisected the Marsac claim, severing the southeastern approximately two acres thereof from the remainder.

5. UPCM then dedicated the relocated SR224 to the Utah Department of Transportation ("UDOT"), which instituted negotiations with plaintiffs regarding acquisition of title to maintain SR224 as relocated across the Marsac Claim.

6. Construction of SR224 across the Marsac claim created steep embankments and other impediments to access, which render the southeast extension of the Marsac Claim inaccessible, except through the property of UPCM.

7. All land within the Mountain Village is subject to the burden to provide access to adjoining land imposed by § 15-7.3-4, Park City Land Management Code.

8. May 25, 2005, the Park City Planning Commission, over the objections of plaintiffs, under § 15-7.3-4, PCLMC, approved the subdivision of UPCM's land adjoining the Marsac Claim on the southeast, and known as Village at Empire Pass (Pod A) West Side.

9. May 26, 2005, the City Council of Park City, over the objection of plaintiffs under § 15-7,3-4, PCLMC, approved the Village at Empire Pass (Pod A) West Side.

10. As a result of said approval, the Marsac Claim has been rendered inaccessible and un- developable, despite §15-7.3-4, PCLMC, as follows:

> Proposed streets shall be extended to the boundary lines of the tract to be subdivided, unless prevented by topography or other physical conditions, or unless in the opinion of the Planning Commission such an extension is not necessary for the coordination of the layout of the subdivision with the existing layout of the most advantageous future development of adjoining tracts.

SUMMARY OF ARGUMENT

It is unclear whether § 10-9-1001 (2)(a), U.C.A. (1953) intends that actions to review municipal land use decisions be filed only in State district courts. It is a familiar principle, however, that a statute will not be given a construction which is unconstitutional, where a constitutional construction is available.

Read to exclude the filing of such actions in the federal district court under its diversity jurisdiction, § 10-9-1001 (2)(a) is unconstitutional. Under the Supremacy Clause, states lack power to interfere with the jurisdiction of federal courts.

The federal district court, as it found, had jurisdiction of this matter upon filing. Such filing, therefore, tolled the running of any statute of limitations. Plaintiffs did not need to show "equitable tolling".

The District Court's gratuitous finding of failure to exhaust administrative remedies is simply misinformed.

What constitute remedies in a municipal planning proceeding is determined by the municipal code, not the State code. The Park City Land Management Code provides that decisions of the Planning Commission respecting MPDs, may be appealed to the City Council. There is no appeal beyond the City Council with respect to MPD's. The Complaint here recites that plaintiffs objected to the Planning Commission, then appealed to the City Council. This exhausted the available remedies.

ARGUMENT

THE U.S. DISTRICT COURT HAD JURISDICTION

The District Court's Order cites two grounds: (1) limitation of filings to the State District Court, and (2) failure to exhaust administrative remedies. The second is a false issue. Neither the District Court nor defendants can point to any administrative remedy not exhausted. The same claim had been raised before, and rejected by the U.S. District Court. There are no unexhausted administrative remedies in this case.

The first ground raises the only substantive issue in this case: may the State, by statute, limit the jurisdiction of federal courts, in cases of diversity of citizenship, to hear state law causes of action? The District Court holds that §10-9-1001 (2) (a) U.C.A. (1953) limits the remedy to State District Courts. The answer to the question raised, however, said to be "axiomatic" and "well-established" is "no". No such State limitation is valid.

> It is not questioned that as a ground rule the jurisdiction of federal courts over cases within the field of their jurisdiction cannot be enlarged, diminished or impaired by state statutes or regulations; and a person may not be deprived of his right to resort to the federal courts by state regulation.

Sacramento Municipal Utility District v. Pacific Gas and Elect. Co., 128 P.2d. 529, 532 (Calif. 1942).

> I am of opinion that the defendant, as a third class city of the Commonwealth of Pennsylvania, situate in this district, is amendable to suit in this court, provided the plaintiff's status is such as to establish diversity of citizenship between the plaintiff and the defendant under Article III, Section 2 of the federal Constitution and the laws of congress passed in pursuance thereof. It is true that the statue of Pennsylvania relating to cities of third class which lie in more than one county provides that such cities "shall * * * be deemed and considered as under and within the jurisdiction of the courts of that county in which is situate the borough first incorporated of those forming such consolidated borough." P.L. 1931, 1932 § 211, 53 P.S.Pa. § 12198–211. Defendant argues from this fact that the city of Bethlehem, being such a city as is referred in the above mentioned statute, is suable only in the state courts of Northampton County. I do not so conclude. The various states of the Union fix by statute the jurisdiction of their own courts and the venue of suits brought in those courts. Whenever an action is commenced in the state courts, the proceedings therein must conform to the requirements of the state statutes. It is otherwise in the respect of the proceedings commenced in or removed to district court of the United States. There, if the matter in controversy exceeds three thousands in value and the suit is brought to Federal Court on the ground of diverse citizenship, the only questions to be answered, if there be only one plaintiff and one defendant, are: (1) Are the plaintiff and defendant citizens

of different states? And (2) is the defendant a resident in the district in which the action was commenced?

Mr. Garry v. City of Bethlehem, 45 F.Supp. 385, 385-386 (E.D. Pa. 1942).

> The narrow issue before the court is whether the exclusive grant of original jurisdiction to the state district courts over tort claims brought against counties, municipalities and their officers prevents a federal district court from hearing such claims pursuant to its pendent jurisdiction. I hold that section 41-4-18, N.M. Stat.Ann. (1982 Repl. Pamp), which purports to confine exclusive original jurisdiction for any claim under Tort Claims Act to the district courts of New Mexico, is unconstitutional to the extent it acts to limit pendent jurisdiction of a federal district court over tort claims against counties, municipalities, and their officers. . . .
> Once the state legislature waives sovereign immunity for counties and municipalities and provides for enforcement of rights and remedies in the state courts, it may not prevent the adjudication of these rights and remedies in a federal district court if that court has jurisdiction under the constitution and laws of the United States. It is axiomatic that, pursuant to the supremacy clause, article III preempts any contrary state law. Section 41-4-18, therefore, is unconstitutional to the extent it attempts to confine suits against New Mexico counties municipalities, or county and municipal officers to New Mexico state district court and will not have the effect of limiting the jurisdiction of the courts of the United States.

Wojciechowski v. Harriman, 607 F.Supp. 631, 633, 635 (D.N.M. 1985).

> The remaining issue is whether this Court lacks jurisdiction over this suit under Ohio law. The enabling statute for the OTC provides, in pertinent part:
>
> [t]he Ohio Turnpike Commission may do any of the following:
>
> * * * * * *
>
> (4) Sue and be sued in its own name, plead and be impleaded, provided any actions against the commission shall be brought in the common court of pleas of the county in which the principal office of the commission is located, or in the court of common pleas in the county in which the cause of action arose if that county is located within this state. . . .

> It is well-settled that states can cloak themselves and the entities they create in sovereign immunity. However, once a state elects to make a state-created entity subject to suit, the entity is subject to provisions of Article III, § 2 of the United States Constitution and 28 U.S.C. § 1332(a)(1) giving the federal courts jurisdiction over claims between citizens of different states. . . .
> Here, Ohio chose to make the OTC liable to suit. It cannot by statute subsequently divest this Court of its diversity jurisdiction over the OTC. Therefore, this Court concludes that the dispute is appropriately before it.

Wildner Contracting Co., Inc. v. Ohio Turnpike Commission, 913, F. Supp. 1031, 1037 (N.D. Ohio 1996).

Even if it could be shown that § 10-9-1001(2)(a) intended to limit jurisdiction to State District Courts, the statute could not do so. The constitutional interpretation of § 10-9-1001(2)(a) is that it permits filing in any district court having jurisdiction, including a federal district court having diversity jurisdiction.

The statute of limitations contained in § 10-9-1001(2)(a) could not run after the action was filed in a court having jurisdiction.

EXHAUSTION OF REMEDIES

The District Court rules that, though the Motion before it did not raise the matter, the "plain error doctrine" (citing *State v. Morrison*, 937 P.2d. 1293, 1296 (U. App. 1997)) allowed the Court to find that plaintiffs had not exhausted their administrative remedies. This was plain error.

It did not occur to the District Court that the matter was not raised in the Motion because it could not be. There were no administrative remedies to exhaust. This was fully plead in the Complaint.

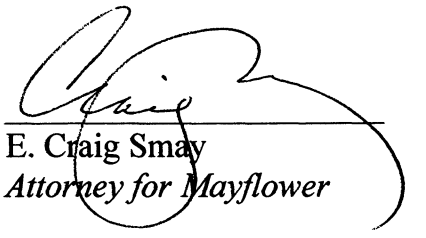
Notwithstanding the general rule of §10-9-405, U.C.A. (1953), the specific rule of the Park City Land Management Code ("PCLMC") is that matters of compliance with the code regarding Master Planned Developments are addressed in the first instance to the Planning Commission. An appeal from the decisions of the Planning Commission will lie to the City Council. No further appeals will lie. PCLMC §15-1-18 (c). The Complaint in this case states with particularly that objection was made to the Planning Commission, followed by appeal to the City Council. While it does not state that no further appeals were available, this was amply sufficient to show exhaustion of administrative remedies. Defendants did not raise the matter because there was nothing to raise.

The foregoing matter was attempted to be explained to the District Court at hearing, as reflected in note 5 of the Ruling and Order. At hearing plaintiff challenged defendants to identify any remedy not exhausted; they could not.

CONCLUSIONS

The District Court ruling was in error on both of the matters asserted in support. The ruling should be promptly reversed.

RESPECTFULLY submitted this 22nd day of February, 2007.



E. Craig Smay
Attorney for Mayflower

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BRIEF**, was sent this 22nd day of February, 2007 to the following by U.S. Mail:

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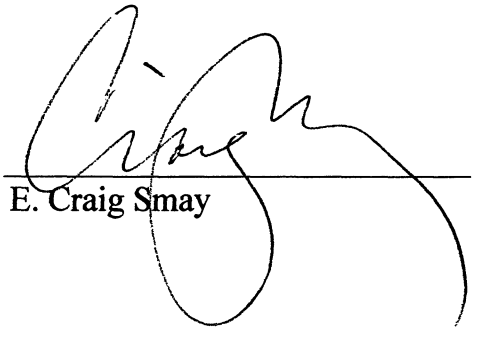

E. Craig Smay

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

STICHTING MAYFLOWER MOUNTAIN FONDS and STICHTING MAYFLOWER RECREATIONAL FONDS, Netherlands associations, Plaintiffs, vs. PARK CITY MUNICIPAL CORPORATION, EAST WEST PARTNERS, and UNITED PARK CITY MINES CO., Defendants.	**RULING and ORDER** Case No. 060500190 Judge BRUCE C. LUBECK DATE: October 5, 2006

The above matter came before the court on October 2, 2006, for oral argument on motion of United Park City Mines (United Park) to dismiss. Plaintiffs (Mayflower) were present through E. Craig Smay, Park City and East West Partners (East West)were present through Mark R. Gaylord, and United Park was present through Robert S. Campbell, Clark K. Taylor, Stephen K. Christiansen.

United Park filed this motion on May 26, 2006. It was joined by Park City on June 8, 2006, and joined by East West on July 10, 2006. United Park filed a request to submit on July 5, 2006, asserting plaintiffs had not filed an opposition. On that same day, plaintiffs requested a hearing, asserting they had not received the motion. The next day, July 6, 2006, plaintiffs filed a response to the motion. United Park filed a motion to strike that response on July 18, 2006. Plaintiffs filed an

objection to the request to submit on July 19, 2006. United Park filed no reply. A restated request to submit was filed by United Park on July 18, 2006. The court then scheduled oral argument and thereafter took the matter under advisement.

The court has reviewed the pleadings of the parties heard oral argument, and concludes as follows.

BACKGROUND

Plaintiffs filed this complaint April 19, 2006. In summary Mayflower seeks a declaration that Park City's approval of United Park's Village at Empire Pass, (Pod A) West Side, discriminates against Mayflower's land and violates the Park City Land Management Code (Code) and the United States and Utah Constitutions. Mayflower owns land, Claim No. 61, of the Marsac Lode, and that has been included by Park City in a development known at Mountain Village. Some lands belong to United Park or its successor East West. Though all the land is identically zoned, Park City has maintained no land may be developed except that which belongs to United Park or its successors. In 2002 United Park relocated SR 224, the access road, so it bisects the Marsac claim, severing two acres from the remainder, and that was done without permission of Mayflower. United Park then dedicated the relocated SR 224 to the Utah Department of Transportation

(UDOT). That relocated road created steep embankments which impede access and render a portion of Mayflower's land inaccessible except across United Park's land.

As causes of action, Mayflower claims Park City approved the subdivision of United Park's land adjoining the Marsac Claim in May 2005. This violates the Park City Code, section 15-7.3-4, which provides that proposed streets shall be extended to the boundary lines of the tract to be subdivided unless topography prevents that or the Planning Commission finds it is not necessary.

Park City filed an answer on May 30, 2006, and later joined in the motion to dismiss filed by United Park. East West also filed an answer July 10, 2006, and joined in the motion to dismiss the same day.

ARGUMENTS

United Park moves to dismiss under URCP, Rule 12(b)(6). If it appears plaintiff would not be entitled to relief under any set of facts pleaded, such a motion may be granted.

United Park claims this complaint is really an appeal of a land planning decision of Park City made in May 2005. A land planning decision is subject to review under the Municipal Land Use Development and Management Act, MLUDMA. A petition for judicial review must be made withing 30 days of final action, or

by June 2005.

Historically, Mayflower filed a complaint in United States District Court on June 22, 2005. That was dismissed by that court in April, 2006. This complaint followed within a few days. That mistaken filing does not toll the limitations period of MLUDMA.

Moreover, the complaint does not state a claim that the Park City decision violates either the Due Process or Equal Protection clauses of the United States or Utah Constitutions.

Mayflower is said to have no claim of entitlement to a state-created right. Park City had and has legitimate discretion to deny Mayflower's proposed use. If there is no invidious discrimination, such as on racial grounds, a planning decision is a matter for the state and does not implicate the State of Federal Constitution. Thus, the review is limited to whether the decision was arbitrary or capricious. Mayflower does not even claim it had a legitimate claim of entitlement, and they could not prove such even if they made the claim. Mayflower was not entitled to a denial of the Village at Empire Pass' right of development. Mayflower has not alleged, and could not prove, that Park City lacked discretion in approving the Village at Empire Pass.

The complaint has alleged invidious discrimination, but no facts could be shown that would entitle plaintiffs to relief. There is no racial animus or other stereotyping that would allow

such a claim to stand.

As to the equal protection claim, there must be membership in a particular group before a decision of a decision-maker could violate another's equal protection rights. That has not been alleged nor could it be proven.

Further, the complaint alleges MLUDMA has been violated, and it is cited as UCA 10-9-405. The statute has been renumbered and thus the complaint fails to give notice and should be dismissed.

Mayflower filed a response and urges that the federal court dismissed the case based on principles of abstention rather than the merit of the allegations as such. The dismissal of the federal court action was without prejudice to proceeding in state court, where the State interests were stated to be paramount. The case was filed in a district court where it remained, as a challenge to the Park City decision, until the federal court dismissed it not on the merits but on abstention grounds. Thus, no time limits for seeking review were missed.

As to the merits, Mayflower agrees it has never asserted it was entitled to a denial of United Park's project. Mayflower asserts that its own land in the same development zone has been denied development rights, and that is the unlawful conduct. Mayflower claims Park City and United Park contracted and agreed that Park City would allow United Park to develop land but no one

else could do so without United Park's consent. That has not been denied for purposes of this motion.

The complaint does allege invidious discrimination, and "group" discrimination may be inferred: the discrimination is against non-resident, foreign investors. Plaintiff need not prove discrimination at this point. Park City allowed one of two land owners to develop, and both are similarly situated, and a claim is thus stated for relief.

The statute cited, MLUDMA, was numbered as Mayflower pleaded it at the time of the events, and so a re-numbering is not defective and United Park's argument is called by plaintiff "comic relief."

DISCUSSION

"A Rule 12(b)(6) motion to dismiss admits the facts alleged in the complaint but challenges the plaintiff's right to relief based on those facts." *Oakwood Vill. L.L.C. v. Albertsons, Inc.*, 2004 UT 101 ¶ 8, 104 P.3d 1226. The purpose of a motion to dismiss "is to challenge the formal sufficiency of the claim for relief, not to establish the facts or resolve the merits of a case." *Whipple v. Am. Fork Irrigation Co.*, 910 P.2d 1218, 1220 (Utah 1996). "A dismissal is a severe measure and should be granted by the trial court only if it is clear that a party is not entitled to relief under any state of facts which could be

proved in support of its claim." *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990).

The threshold dispute of the parties is whether Mayflower's claims are barred by MLUDMA's statute of limitation provision, *Utah Code Annotated* § 10-9-1001(2)(a).[1] That provision states that:

> Any person adversely affected by any decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

Mayflower does not dispute that the current action was filed in this court more than 30 days after the alleged violation, but maintains that because it filed the action in federal district court within 30 days, it's right to review is protected. Mayflower correctly notes that the federal court did not find that the matter had been filed in the "wrong" court, but simply found that the matter was best heard in state court and therefore abstained from hearing the matter.

The issue remains, however, whether filing the matter in federal court satisfied § 10-9-1001(2)(a) or, alternatively, whether the federal filing tolled the limitations period. The court is not convinced that filing in federal district court

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[1] The parties dispute whether the 2004 version or the 2005 version of the statute applies. Although the Court cites the 2004 version because the violation purportedly occurred in 2004, the analysis and result would be the same under either version.

satisfied the statute of limitations. Mayflower contends that the matter "has always been in a court having jurisdiction," referring to the federal district court and then this court. However, § 10-9-1001(2)(a) does not allow the petition to be filed in "a court having jurisdiction," but requires that the petition be filed with "***the*** district court" (emphasis added). In addition to this plain language, it is important to note that the provision is part of a comprehensive state scheme regarding municipal land use development and management. The context of the provision in a comprehensive state land use scheme supports a finding that "the district court" refers to the state district court where the decision is made by a land use body, not a federal district court or some other district court in, for example, another state or even another county. Mayflower offers no authority or argument for finding that "the district court" includes a federal district court and this court declines to interpret it in such a fashion. Therefore, Mayflower's filing in federal district court did not satisfy the 30 day filing period.

The remaining question, then, is whether the limitations period was tolled. Mayflower does not contend that the statutory tolling provision in § 10-9-1001(2)(a) applies, and indeed, it does not. Therefore, if the limitations period is to be tolled, it must be through equitable tolling.

The Utah Supreme Court recently noted that "[n]o Utah court

has ever found occasion to equitably toll a limitations period when there has not first been a demonstration that the party seeking the tolling could invoke the discovery rule due to an excusable delay in discovering the underlying claim before the limitations period expired." *Beaver County* v. *Property Tax Division of the Utah State Tax Commission*, 2006 UT 6 ¶ 29, 128 P.3d 1187. It is undisputed in this case that Mayflower knew of the claimed violation prior to the expiration of the limitations period and therefore the discovery rule does not apply.

Although the Utah Supreme Court has not held that equitable tolling is never available outside of the discovery rule context, it has stated that it is a "high bar" for "those seeking such extraordinary relief to hurdle." *Beaver County*, 2006 UT at ¶ 29. To meet this hurdle, Mayflower must show "exceptional circumstances where the application of the general rule would be 'irrational' or 'unjust.'" *Estes v. The Honorable Don V. Tibbs*, 1999 UT 52 ¶ 5, 979 P.2d 823 (quoting *Sevy v. Security Title Co.*, 902 P.2d 629 (Utah 1995).

Mayflower does not cite a single case from any jurisdiction showing that filing in a federal district court that subsequently abstains from hearing the matter should toll the limitations period.[2] Although this Court's own research uncovered at least

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[2] Indeed, Mayflower does not cite one case anywhere in its briefing in support of any of its arguments. Such lack of citation is surprising where Mayflower contends both the federal

one such case,[3] this court does not find that Mayflower's circumstances warrant "exceptional circumstances" as required under Utah law.

In *Beaver County*, the Utah State Tax Commission determined that it could equitably toll the statutory period on issuing escaped property taxes to allow its Property Tax Division to issue an assessment against a utility company. *Beaver County*, 2006 UT at ¶ 1. The Commission equitably tolled the period out of fairness to counties who had intervened because the counties had done everything they could to get the Property Tax Division to issue a timely assessment. *Id.* at ¶ 26.

The Utah Supreme Court reversed and found that it would not be irrational or unjust to apply the limitations period because the Property Tax Division clearly had the opportunity to make a timely assessment. *Beaver County*, 2006 UT at ¶ 28. The court concluded that "[w]hile this outcome may seem harsh in that it deprives the Counties of an opportunity to litigate any claim to the tax revenue, it is the necessary result of having limitations periods and the accompanying benefit of finality for which these

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and state constitutions have been violated. It clearly does not make the Court's job any easier when one party does not support any of its assertions with appropriate authority.

[3] See Encompass Services Holding Corp. v. Prosero Inc., 2005 Del. Ch. LEXIS 17 (using equitable tolling where plaintiff believed that he was required to file the claim in his Bankruptcy action).

statues were designed. Limitations periods exist to extinguish claims not acted upon; thus, the loss of a claim occurs every time these time limits are enforced, and such a loss is simply not a reason to toll the statutory period absent application of the discovery rule." *Id.* at ¶ 46.

The Utah Supreme Court's application of the limitations period in *Beaver County* is more harsh to the counties than application of the periods to Mayflower is in this case. Mayflower's complaint filed in federal district court was filed under diversity jurisdiction and its sole cause of action was for violation of the Utah Code. Mayflower should have known that there was at least a possibility that the federal court would abstain from hearing the matter in favor of a state court. Land use matters are certainly traditionally state concerns. State courts are not forbidden from entertaining constitutional claims of discrimination either. Mayflower should have also known it was taking a risk where the limitations period was only 30 days. Nevertheless, Mayflower chose to take that risk and file in federal district court. Although it may now seem harsh to deprive Mayflower of its opportunity to have its claims heard, the claim seeks a review of action by the county. This court is bound to follow the law as set out by statute and the Utah Supreme Court.

Moreover, even if this court could find that Mayflower's

circumstances are "exceptional," Mayflower's claims could still not be brought because it failed to exhaust its administrative remedies.[4] Section 10-9-1001(1) states that "[n]o person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted his administrative remedies." Section 10-9-704(1)(a)(I) further provides that "any . . . person . . . adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance."

Mayflower's entire claim is that it was adversely affected by Park City's decision not to enforce its zoning ordinance properly and require United Park to provide access to Mayflower's property.[5] Because Mayflower's allegations involve a

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[4] Although this matter was not briefed by the parties, it was argued at oral argument. Moreover, the plain error doctrine allows this Court to correct obvious errors. See State v. Morrision, 937 P.2d 1293, 1296 (Utah Ct. App. 1997) (reversing conviction because trial court did not sua sponte prevent improper testimony from coming in as evidence).

[5] At oral argument, Mayflower contended that since it was not seeking an application to develop its own property, but simply asking that Park City enforce its zoning ordinance and require United Park to provide access to Mayflower's property, there was no decision to appeal. However, the statute allows appeals of "any . . . decision . . . made by an official in the

municipal decision administering a zoning ordinance, Mayflower was obligated to appeal that decision prior to filing a petition in the district court. Mayflower has not pled that it ever filed such an appeal and therefore it is barred from alleging a violation of § 10-9-405.

Therefore, for the above reasons, United Park's Motion to Dismiss is hereby GRANTED.[6]

This Ruling and Order is the Order of the Court and no other order is required.

DATED this 5 day of October, 2006.

BY THE COURT:

BRUCE C. LUBECK
DISTRICT COURT JUDGE

STATE OF UTAH THIRD DISTRICT COURT SUMMIT COUNTY

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administration . . . of the zoning ordinance." UTAH CODE ANNOTATED § 10-9-704(1)(a)(I). This is clearly broad enough to include Park City's refusal to enforce the ordinance.

[6] United Park also filed a motion to strike Mayflower's opposition memorandum alleging that Mayflower violated this Court's July 5, 2006 order. Whatever technical violation might have occurred, this court does not find that striking Mayflower's response is necessary and the response was fully considered in this Court's decision. United Park's motion to strike is DENIED.

04-11-04
525

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

STICHTING MAYFLOWER MOUNTAIN FONDS and STICHTING MAYFLOWER RECREATIONAL FONDS, Netherlands associations, Plaintiffs, vs. PARK CITY MUNICIPAL CORPORATION, EAST WEST PARTNERS, and UNITED PARK CITY MINES CO., a Delaware corporation, Defendants.	MEMORANDUM DECISION AND ORDER DENYING PLAINTIFFS' MOTION TO AMEND AND GRANTING DEFENDANTS' MOTION TO DISMISS Case No. 2:05-CV-525 TS

This matter came before the Court for oral argument on a number of motions on April 10, 2006. For the reasons stated at the hearing, the Court denied United Park City Mines' ("United") Motions to Strike. The Court also denied United's Motion for Sanctions. The Court heard argument on, and took under advisement, Plaintiffs' Motion to Amend and Defendants' Motion to Dismiss. For the reasons stated below, the Court will deny Plaintiffs' Motion to Amend and will grant Defendants' Motion to Dismiss.

I. BACKGROUND

In their Complaint, Plaintiffs allege that they are owners of land called the Marsac Lode in Park City, Utah. This land has been included in an eighty-four acre development zone called the Mountain Village. The rest of the land in the Mountain Village belongs to United or East West Partners. Previously, the Mountain Village has been accessible by State Road 224 ("SR 224"). In 2002, Plaintiffs allege that United relocated SR 224 so that it now bisects Plaintiffs' land, severing the southeastern two acres from the rest of the land. United then dedicated SR 224 to the Utah Department of Transportation ("UDOT"). Plaintiffs state that they are in negotiations with UDOT regarding acquisition of title to maintain SR 224. As a result of this new construction of SR 224, Plaintiffs allege that the southeast portion of their land is inaccessible, except through the property of United.

On May 25, 2005, the Park City Planning Commission, over Plaintiffs' objections, approved the subdivision of United's land adjoining Plaintiffs' land on the southeast. This subdivision is known as the Village at Empire Pass (Pod A) West Side. On May 26, 2005, the City Council of Park City, again over the objections of Plaintiffs, approved that subdivision. As a result, Plaintiffs allege that their land has been rendered inaccessible and they are unable to develop it. Plaintiffs allege violations of § 15-7.3-4 of the Park City Land Management Code[1] and § 10-9-405(2) of Utah Code Annotated.[2] Plaintiffs seek a declaratory judgment that Park

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[1]"Proposed Streets shall be extended to the boundary lines of the tract to be subdivided, unless prevented by topography or other physical conditions, or unless in the opinion of the Planning Commission such an extension is not necessary for the coordination of the layout of the Subdivision with the existing layout of the most advantageous future development of adjoining tracts."

[2]"The legislative body shall ensure that the regulations are uniform for each class or kind of buildings throughout each zoning district, but the regulations in one zone may differ from

City's approval of United's Village at Empire Pass (Pod A) West Side Subdivision violated Plaintiffs' rights under the above-named provisions.

II. PLAINTIFFS' MOTION TO AMEND

Plaintiffs have filed a Motion to Amend their Amended Complaint. They seek to add claims that Defendants' actions violate Section 1 of the 14th Amendment and Sections 7 and 24 of Article 1 of the Utah Constitution. Plaintiffs also seek to add a claim for damages in the amount of $2.5 million. They do so in an apparent attempt to bolster their claim that this Court should exercise jurisdiction over this matter. The Court is not persuaded. For the reasons discussed below, the Court will abstain and will dismiss Plaintiffs' Amended Complaint without prejudice to its filing in state court. Plaintiffs proposed amendments do not change this outcome. Therefore, Plaintiffs' Motion to Amend is denied.

III. DEFENDANTS' MOTION TO DISMISS[3]

Although not styled as such, the Court finds that Defendant United's Motion to Dismiss is better considered a Motion for Abstention under *Burford v. Sun Oil Co.*[4] "Abstention from the exercise of federal jurisdiction is the exception, not the rule."[5] "*Burford*-type abstention is

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those in other zones."

[3]Defendant United has filed a Motion to Dismiss in which Defendants Park City and East West Partners have joined. The Court will refer to these Motions as a single Motion to Dismiss.

[4]319 U.S. 315 (1943). Plaintiffs argue that abstention is inappropriate and direct the Court to the case of *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). That case, however, does not address abstention under *Burford*, but rather another abstention doctrine found in *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942) and *Colorado River Water Conservation Dist. v. United States*, 242 U.S. 800 (1976). Therefore, *Wilton* is inapposite here.

[5]*Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976).

deference by a federal court in order to avoid needlessly interfering in state activities."[6] The Supreme Court has stated that

> *Burford* allows a federal court to dismiss a case only if it presents difficult questions of state law bearing on policy problems of substantial import whose importance transcends the results in the case then at bar or if its adjudication in a federal forum would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.[7]

"Ultimately, what is at stake is a federal court's decision, based on a careful consideration of the federal interest in retaining jurisdiction over the dispute and the competing concern for the independence of state action, that the State's interests are paramount and that a dispute would best be adjudicated in a state forum."[8] "This equitable decision balances the strong federal interest in having certain classes of cases, and certain federal rights, adjudicated in federal court, against the State's interest in maintaining uniformity in the treatment of an essentially local problem."[9]

In *Burford*, the Supreme Court considered whether a federal court should have entertained an action attacking the validity of an order of the Texas Railroad Commission granting Burford a permit to drill certain oil wells.[10] The state's scheme for regulating oil and gas drilling was extremely complex and, in an effort to avoid confusion, the state legislature

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[6]*Walker Operating Corp. v. F.E.R.C.*, 874 F.2d 1320, 1330 (10th Cir. 1989).

[7]*Quakenbush v. Allstate Ins. Co.*, 517 U.S. 706, 726–27 (1996) (internal quotations omitted).

[8]*Id.* at 728 (internal quotation marks and citations omitted).

[9]*Id.* (internal quotation marks and citations omitted).

[10]319 U.S. at 316–17.

limited initial review of a decision by the Texas Railroad Commission to a single district court.[11] As a result of the system that the state had established, the Court held that federal courts should abstain from hearing cases challenging orders of the Texas Railroad Commission.[12]

Here, the state has set up a complex and comprehensive set of land use regulations under Utah's Municipal Land Use Development Management Act ("MLUDMA"). Part of the MLUDMA establishes a process whereby a party aggrieved by a municipal planning or zoning decision may file a petition for review with the district court.[13] Since this is a state statute, the Court finds that the reference to "district court" in this statute is to a state district court, not a federal district court.

Additionally, land use and zoning laws are quintessential areas of state and local concern.[14] As the numerous cases cited by United indicate, federal courts should be wary of entering into local land use disputes and should not sit as a zoning board of appeal.[15] Because of these considerations, any adjudication of these issues in a federal forum would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.[16]

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[11]*Id.* at 318–26.

[12]*Id.* at 333–34.

[13]Utah Code Ann. § 10-9a-801(2)(a).

[14]*F.E.R.C. v. Mississippi*, 456 U.S. 742, 768 n.30 (1982).

[15]*Norton v. Village of Corrales*, 103 F.3d 928, 930 (10th Cir. 1996); *Spence v. Zimmerman*, 873 F.2d 256, 262 (11th Cir. 1989); *Coniston Corp. v. Village of Hoffman Estates*, 844 F.2d 461, 467 (7th Cir. 1988); *Creative Environments, Inc. v. Estabrook*, 680 F.2d 822, 832 n.9 (1st Cir. 1982); *Construction Indus. Ass'n of Sonoma County v. City of Petaluma*, 522 F.2d 897, 906 (9th Cir. 1975).

[16]*Quakenbush*, 517 U.S. at 726–27.

After careful consideration of the federal and state interests at issue here, the Court finds that the state's interests are paramount and that this dispute would best be adjudicated in a state forum.[17] Therefore, the Court will invoke the doctrine of abstention under *Burford* and dismiss this case without prejudice to its filing in state court.

IV. CONCLUSION

It is therefore

ORDERED that Plaintiffs' Motion to Amend (Docket No. 41) is DENIED. It is further

ORDERED that Defendants' Motions to Dismiss (Docket Nos. 27, 33, and 34) are GRANTED. Plaintiffs' Amended Complaint is dismissed without prejudice to its filing in state court.

The Clerk of the Court is directed to close this case forthwith.

DATED April 11, 2006.

BY THE COURT:

TED STEWART
United States District Judge

[17] *Id.* at 728.

shall be buried in any land, or left or deposited on any Lot or Street at the time of issuance of a certificate of occupancy, and removal of same shall be required prior to issuance of any certificate of occupancy on a Subdivision, nor shall any be left or deposited in any Area of the Subdivision at the time of expiration of the performance bond or dedication of public improvements, whichever is sooner.

(K) FENCING. Each Applicant and/or Developer shall be required to furnish and install Fences wherever the Planning Commission determines upon the recommendation of the Community Development Director that a hazardous condition may exist. The Fences shall be constructed according to standards to be established by the City Engineer and shall be noted as to height and material on the Final Plat. No certificate of occupancy shall be issued until said Fence improvements have been duly installed.

15-7.3-4. ROAD REQUIREMENTS AND DESIGN.

(A) LAYOUT REQUIREMENTS.

(1) **GENERAL LAYOUT REQUIREMENTS.**

(a) Roads shall be graded and improved and conform to the Park City Design Standards, Construction Specifications, and Standard Drawings and shall be approved as to design and specifications by the City Engineer, in accordance with the construction plans required to be submitted prior to Final Plat approval. Prior to Final Plat approval the Public Works Director and the Community Development Director shall make the determination as to whether each Street is to be public or private. Such status shall be shown on the plat.

(b) The rigid rectangular gridiron Street pattern need not necessarily be adhered to, and the use of curvilinear Streets, Cul-de-sacs, or U-shaped Streets shall be encouraged where such use will result in a more desirable layout.

(c) In business and industrial Developments, the Streets and other Access ways shall be planned in connection with the grouping of Buildings, location of rail facilities, and the provision of alleys, truck loading and maneuvering Areas, and walks and parking Areas so as to minimize conflict of movement between the various types of traffic, including pedestrian.

(d) Proposed Streets shall be extended to the boundary lines of the tract to be subdivided, unless prevented by topography or other physical conditions, or unless in the opinion of the Planning Commission such an extension is not necessary for the coordination of the layout of the Subdivision with the existing layout or the most advantageous future Development of adjacent tracts.

(2) **FRONTAGE ON AND ARRANGEMENT TO IMPROVED ROADS.**

(a) No Subdivision shall be approved unless the Area to be subdivided has Frontage on and Access from an existing Street on the Streets Master Plan unless such Street is an existing state or county highway; or a Street shown upon a plat approved by the Planning Commission and recorded in the County Recorder's office. Such Street or highway must be suitably improved as required by the highway rules, regulations, specifications, or orders, or be secured by a performance Guarantee required under these Subdivision regulations, with the width and Right-of-Way required by these Subdivision regulations or the Streets Master Plan.

Wherever the Area to be subdivided is to utilize existing road Frontage, such road shall be suitably improved as provided hereinabove.

(b) All Streets shall be properly integrated with the existing and proposed system of thoroughfares and dedicated Rights-of-Way as established in the Streets Master Plan.

(c) All thoroughfares shall be properly related to specific traffic generators such as industries, business districts, schools, churches, and shopping centers; to population densities; and to the pattern of existing, proposed, and future land uses.

(3) **ROAD ARRANGEMENT IN RELATION TO TOPOGRAPHY.**

(a) Roads shall be related appropriately to the topography. Local roads may be curved to avoid conformity of Lot appearance and to discourage through traffic. All Streets shall be arranged so as to obtain as many as possible of the

15-1 -15. PENALTIES.

Any Person, firm, partnership, or corporation, and the principals or Agents thereof violating or causing the violation of this LMC shall be guilty of a Class "C" misdemeanor and punished upon conviction by a fine and/or imprisonment described in the current Park City Criminal Code. In addition, the City shall be entitled to bring a civil action to enjoin and/or abate the continuation of the violation.

Private citizens of Park City or Property Owners have the right to file actions to enjoin the continuation of a violation affecting their interests, provided that the plaintiff in such action gives notice of the action to the City Recorder prior to filing the action.

15-1 -16. LICENSING.

Licenses or permits issued in violation of this LMC are null and void.

15-1 -17. VESTING OF ZONING RIGHTS.

(A) Upon submittal of a Complete Application, the Application shall vest pursuant to the terms of the LMC and Zoning Map in effect at the time of filing the Complete Application.

(B) Vesting of all Permits and approvals terminates upon the expiration or termination of the permit or approval.

(C) **EXCEPTIONS**. Applications shall not vest:

(1) when revisions to the LMC are pending at the time of Application which would prohibit or further condition the approval sought; or

(2) when there exists a compelling and countervailing health, safety or welfare reason for applying the pending standard.

15-1 -18. APPEALS AND RECONSIDERATION PROCESS.

(A) **STAFF**. Any decision by the Community Development Director regarding Application of this LMC to a Property may be appealed to the Planning Commission. Decisions regarding compliance with the Historic District Guidelines may be appealed to the Historic District Commission. The appeal must be filed with the Community Development Department. There shall be no additional notice for appeal of the staff determination other than listing the matter on the agenda, unless notice of the staff review was provided in which case the same notice must be given for the appeal.

(B) **HISTORIC DISTRICT COMMISSION (HDC)**. Final Actions by the Historic District Commission may be appealed to the Board of Adjustment.

(C) **PLANNING COMMISSION**. Final Actions by the Planning Commission on staff appeals may be appealed to the Board of Adjustment. Final Action by the Planning Commission on Conditional Use permits and MPDs may be appealed to the City Council.

(D) **STANDING TO APPEAL**. The following has standing to appeal a Final Action:

(1) Any Person who submitted written comment or testified on a proposal before the Community Development Department, Historic District Commission or Planning Commission;

(2) The Owner of any Property within three hundred feet (300') of the boundary of the subject site;

(3) Any City official, Board or Commission having jurisdiction over the matter; and

(4) The Owner of the subject Property.

(E) **TIMING**. All appeals must be made within ten (10) calendar days of the Final Action. The reviewing body, with the consultation of the appellant, shall set a date for the appeal.

(F) **FORM OF APPEALS**. Appeals to the Planning Commission or Board of Adjustment must be filed with the Community Development Department. Appeals to the City Council must be filed with the City Recorder. Appeals must be by letter or petition, and must contain the name, address, and telephone number of the petitioner; his or her relationship to the project or subject Property; and must have a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken.

(G) **WRITTEN FINDINGS REQUIRED**. The appellate body shall direct staff to prepare detailed written:

(1) Findings of Fact which explain and support the Staff decision;

(2) Conclusions as to how a contrary decision would violate the provisions of this LMC, other City ordinances, or applicable state or federal laws or regulations.

(H) **CITY COUNCIL ACTION ON APPEALS**.

(1) The City Council, with the consultation of the appellant, shall set a date for the appeal.

(2) The City Recorder shall notify the Owner of the appeal date. The City Recorder shall obtain the findings, conclusions and all other pertinent information from the Community Development Department and shall transmit them to the Council.